

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

CASE NO. 10-CR-20513

HONORABLE GEORGE CARAM STEEH

JOHNNY BAKER,

Defendant/Petitioner.

ORDER TRANSFERRING RULE 60(B) PETITION FOR
RELIEF (DOC. #57) TO THE SIXTH CIRCUIT COURT OF APPEALS

The court denied Defendant/Petitioner Johnny Baker's motion to vacate, set aside or correct his sentence under 28 U.S.C. § 2255. (Docs. #42, 50). The court of appeals affirmed and denied Baker a certificate of appealability. (Doc. #55). Now before the court is Baker's Rule 60(b) motion for relief from judgment. (Doc. #57). The motion raises the same claims Baker raised in his § 2255 motion.

A motion under Federal Rule of Civil Procedure 60(b) that asserts or reasserts claims of error in the criminal conviction or sentence is treated as a successive habeas petition. *Gonzales v. Crosby*, 545 U.S. 524, 538 (2005); *United States v. Carter*, 500 F.3d 486, 490 (6th Cir. 2007). The court cannot entertain a successive motion to vacate unless the petitioner obtains authorization from the court of appeals. 28 U.S.C. § 2244(b)(3). Accordingly, the clerk of the court shall transfer Baker's Rule 60(b) petition, which is construed as a motion to vacate sentence under § 2255, to the United States Court of

Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631 and *In Re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

IT IS SO ORDERED.

Dated: October 21, 2015

s/George Caram Steeh

GEORGE CARAM STEEH

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on October 21, 2015, by electronic and/or ordinary mail and also on Johnny Baker #44897-039, Atwater United States Penitentiary, P. O. Box 019001, Atwater, CA 95301.

s/Barbara Radke

Deputy Clerk